

# The role of an executor: What you need to know

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Throughout your life, you may be approached by a family member or friend to act as an executor of that person's estate. While it's flattering to know that you are so highly regarded, you should nevertheless pause for a moment and think carefully before you decide to accept this very important role, particularly if you have not acted as an executor before. This article outlines some of the major issues that you, as a potential executor, should consider. The information is general in nature, and is not intended to be a substitute for legal or professional advice.

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## Accepting an appointment as an executor

Within your role as an executor (or liquidator in Quebec), you are entrusted with the responsibility of administering an estate by carrying out the wishes of the testator (the individual in whose name and request the Will is created) as expressed in the Will. Although potentially rewarding both emotionally and financially, being an executor can also be complicated and time-consuming. Before you decide to take on this role, give some thought to the following caveats:

### 1) Potential complexity of the estate

Estate administration has become increasingly complex. For example, the estate under your administration may involve assets in different countries, beneficiaries from different marriages and/or sophisticated investment and business interests. It is a good idea to make sure you understand these parameters before accepting the appointment of executor.

### 2) Your availability and willingness

Depending on the circumstances, your responsibilities as an executor may continue over a period of years. This is especially true if you have also been called upon to act as a trustee for trusts created in the Will. As an executor or trustee, you are required to carry out all duties personally, though you can and should hire appropriate professionals where specialized expertise is required. Beyond that, you are generally not permitted to delegate your responsibilities. Accordingly, make sure you have an adequate amount of time, energy and ability to devote to this serious task.

### 3) Your knowledge in business, investments and tax matters

As an executor, you may be called upon frequently to exercise your business judgment and knowledge in certain circumstances, such as the realization of estate assets, making investments on behalf of the estate, minimizing the taxes payable by the estate and preparing estate tax returns.

While you can, and in many cases should, retain the services of financial, legal and tax professionals to assist you in these areas, you should still make sure you are comfortable dealing with such matters as you will have the ultimate responsibility for monitoring and approving the actions of those whom you hire.

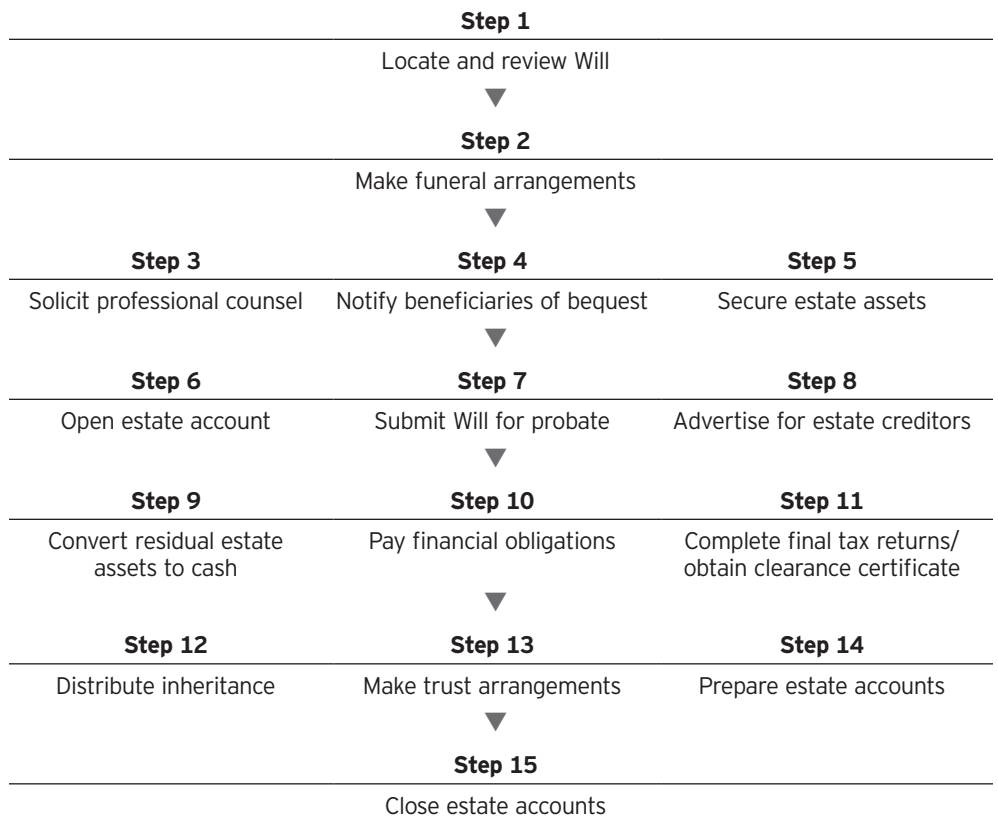
#### 4) Your ability to deal with beneficiaries

Perhaps the most difficult task for an executor is dealing with the family and other interpersonal politics that can arise in the course of estate administration. Executors are often called upon to make decisions that have financial, monetary and tax consequences for beneficiaries and the estate. Many decisions may require that you strike a delicate balance among the various beneficiaries and their competing interests. So, be prepared to act in an impartial and objective manner to best balance the needs of all beneficiaries and mitigate the potential for conflict and hostility.

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### Responsibilities of an executor

The responsibilities of an executor are summarized in the flow chart below.



For a more detailed list of executor duties, responsibilities and obligations, please refer to our *Tax & Estate InfoPage* titled *Executor checklist*.

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## Duties of an executor

An executor is expected to perform duties in the same way that a prudent person would in managing his or her own affairs. In fact, you will be held to the highest degree of responsibility - *fiduciary duty* - requiring you to act in the best interests of the beneficiaries. One way to think about it is that if you act honestly, judiciously and to the best of your ability, you will generally not be held accountable for any losses incurred by the estate.

So, in general, try to make sure that you:

- Avoid conflicts of interest by refraining from transactions involving estate assets that result in a profit to you personally
- Exercise all discretion granted to you in a reasonable manner
- Invest trust assets in a prudent and cautious manner
- Act impartially and objectively with all beneficiaries

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## Preparing for the role of an executor

To be an effective executor, brush up on your knowledge of tax rules as they pertain to deceased taxpayers and improve your understanding of the fiduciary obligations of executors to beneficiaries.

You should then sit down with the person who appointed you as his or her executor and go through the Will to gain better insight of that person's wishes. You may want to inquire about his or her burial and funeral preferences if not specifically outlined in the Will. Also, suggest that the testator prepare an inventory of his or her assets and liabilities. This list will be very helpful in identifying the location of the items when the time comes. A handy way for storing this information is with Invesco's Your estate record keeper, which can be ordered from your financial advisor.

It may also be a good idea to meet with the person's professional estate management team, including his or her lawyer, accountant and financial advisor. With these professionals, you can discuss their roles in helping you settle the estate.

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## Professional assistance

It is strongly suggested that you seek the assistance of a lawyer and/or accountant to help you carry out your duties as an executor, particularly if you feel overwhelmed or don't have the time or skill to conduct all the administrative tasks. If a third party assumes some of your functions, your compensation as an executor may be reduced as a result. Keep in mind that executors are generally not permitted to delegate their duties, so if you do decide to distribute some of your functions, consult a lawyer to make sure that the duties you are sharing are permitted by the Will or by law.

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## Renouncing executorship

You can renounce your position at any time provided you have not started to act on behalf of the estate. Once you become involved in estate affairs, you may require the legal consent of all the beneficiaries or possibly a court order before ceasing to act. Bear in mind that if you do not follow appropriate procedures, you risk personal liability arising from any delays or improper estate administration.

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## **Grant of probate**

Probate is a term that refers to the process whereby a court verifies your authority as an executor. This authority is stipulated within the Will, which the probate process simply confirms. Whether or not probating the Will is required varies by the nature of the case. For example, probate may be required as a result of statutory requirements (e.g., real estate) or by request from a third party (e.g., financial institution) that seeks assurance that they are dealing with the rightful executor. If the estate you are administering is relatively small and uncomplicated, probate may not be necessary.

One benefit of probating a Will is that it can protect the executor against personal liability. If you as the executor choose not to probate a Will, and that Will is subsequently determined to be invalid, the newly appointed executor may look to you personally to reimburse the estate for losses incurred or gains forfeited by the estate during the period it was under your administration.

Also, the law in most provinces enables any dependent of the deceased who feels inadequately provided for by the Will's instructions to apply to the court for support from the deceased's estate. This request must be filed within a certain time frame, usually from the date probate is granted, and not the date of death. Thus, distribution of estate assets before this period has passed is not recommended. Probating the Will can prevent this uncertainty from occurring.

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## **Allotted time frames for estate settlement**

It's recommended that executors work swiftly in settling the estate. Generally, an estate can be settled between 12 and 18 months from the date of the testator's death. This is known as the executor's year. If it takes longer to settle the estate, without reasonable explanation, executor compensation can be reduced and other penalties imposed.

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## **Authorized investments by a trustee**

There are some circumstances, particularly if you are also named trustee of ongoing trusts created in the Will, in which you may be required to invest trust assets. Unless the Will specifically sets out what you can invest in, you are generally not restricted if you comply with the prudent investor/person standard as set out in the legislation of your province. It is recommended that you consult a lawyer in your province to discuss your obligations in this case.

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## **Executor compensation**

As an executor, you are entitled to some compensation for your efforts. In terms of the nature and amount of your compensation, you may want to discuss this in advance with the person who appointed you and incorporate any agreements into the Will. You should also note that any bequest (i.e., asset passed on through inheritance) made to you in the Will may also be presumed to be your compensation (or a part thereof). Any compensation beyond the basic bequest should be indicated in the Will.

If compensation was not discussed in advance, then the amount of compensation you may be entitled to is based on the following factors:

1. Size of the estate
2. Care and responsibility involved
3. Time required in performing the duties
4. Skill and ability shown
5. Success of the work performed

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## **Closing thoughts**

Although an executorship is a serious and potentially time-consuming role, it can also be a gratifying one. The more preparation and honest consideration you give to the role of executor, the more effective you will be in fulfilling the accompanying duties and responsibilities, and achieving the testator's final wishes.



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